

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Evaluate Existing Practices and Policies for Processing General Rate Cases and to Revise the General Rate Case Plan for Class A Water Companies.

R.03-09-005

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON  
THE MAY 26, 2004 DRAFT DECISION**

Pursuant to the schedule set forth in the cover letter to the draft decision, the Office of Ratepayer Advocates ("ORA") here files its comments on the May 26, 2004 second revised draft decision ("RDD" or "May 26 RDD") of Administrative Law Judge ("ALJ") Maribeth Bushey. ORA has previously filed comments on the January 27, 2004 draft decision and March 22, 2004 Workshop Report and the May 4, 2004 revised draft decision. ORA agrees with the many of the changes incorporated by the ALJ in the May 26, 2004 revised draft decision. However, ORA recommends that the Commission modify the RDD as discussed below.<sup>1</sup> ORA also proposes some modifications to the Appendix of the RDD to make it consistent with the text of the decision.

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<sup>1</sup> Pursuant to the ALJ's preference expressed during a telephone conversation with ORA staff Diana Brooks, ORA has included "red-line" changes to portions of the May 26 RDD.

**I. ORA CONTINUES TO RECOMMEND THAT THE COMMISSION SEEK TO MODIFY PUBLIC UTILITIES CODE § 455.2 TO ALLOW RATES TO BE EFFECT ONE YEAR AFTER THE RATE CASE IS FILED.**

The May 26, RDD adopts a calendar year test year January filers and fiscal year test year for July filers. (May 26 RDD, p. 8.) ORA can accept this proposal, although it will create extra work for the utilities and ORA. The RDD encourages the utilities and ORA “to establish standardized protocols for fiscal test years.” (Id. at p. 6.) This will require agreements on how to convert a summary of earnings, income tax, depreciation, expenses, revenues, etc. from a calendar year basis to a fiscal year basis. It will also require defining how the utilities should present their capital budgets, because, as ORA understands it, the utilities project capital expenditures on a calendar year basis.

Many of the utilities oppose using a fiscal test year for July filers and raised this issue at the June 1, 2004 all-party meeting with Commissioner Brown. Subsequent to that meeting, ORA and utilities met to explore workable options that would result in parity for both January and July filers and attempt to meet the requirements Public Utilities Code (“P.U. Code) § 455.2.

After the all-party meeting, ORA and the utilities explored a number of options. The utilities proposed the following solution and ORA has made one clarifying edit to it:

For July filers, the effective date requirement in S 455.2 necessitates a test year that begins on July 1. However, no such constraint applies for the two escalation years. It is both simpler and fairer to allow all utilities to implement escalation year rates on a calendar year basis. Accordingly, escalation year rates will be effective January 1 of the second and third years of the rate case cycle. Assuming that rates are effective July 1, test year rates for July filers will only be in effect for six months -- from the beginning of the test year on July 1 through the end of December. Because July filers will have the benefit of test year rates for only half a year, a surcharge will be

authorized to allow the utility to recover the increase in the other half of the revenue requirement over the three years of the rate case cycle. The base year for calculating/forecasting escalation year and test year rates will be a calendar year for both January and July filers.

ORA supports this recommendation, if legal, and believes this is the best solution to this dilemma proposed thus far.<sup>2</sup> It is streamlined and puts January and July filers on an equal footing.

It appears that there is no perfect solution to this dilemma. Therefore, ORA continues to recommend the Commission pursue clean-up legislation on this matter. ORA recommends that the Commission seek to modify P.U. Code § 455.2 (a) and (b) so that rates go into effect one year after the general rate case application is filed, instead of on the first day of the test year.<sup>3</sup> The legislation, as written, creates unintended consequences for July filers by requiring that rates

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<sup>2</sup> However, this recommendation may face the same problem as that contained in the January 27, 2004 draft decision in that it creates two different definitions for “test year.” The RDD defines test year as “a 12-month period over which projected costs and revenue are evaluated to determine if a rate change is required.” (May 26 RDD at p. 5.)

<sup>3</sup> ORA recommends the P.U. Code § 455.2 be modified as follows:

**455.2.** (a) The commission shall issue its final decision on a general rate case application of a water corporation with greater than 10,000 service connections in a manner that ensures that the commission's decision becomes effective one year after ~~on the first day of the first test year in~~ the general rate increase application is filed.

(b) If the commission's decision is not effective in accordance with subdivision (a), the applicant may file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation as compared to existing rates. The interim rates shall be effective ~~on the first day of the first test year in~~ one year after the general rate case application is filed. These interim rates shall be subject to refund and shall be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the commission. The commission may authorize a lesser increase in interim rates if the commission finds the rates to be in the public interest. If the presiding officer in the case determines that the commission's decision cannot become effective one year after the filing date of the general rate case application ~~on the first day of the first test year~~ due to actions by the water corporation, the presiding officer or commission may require a different effective date for the interim rates or final rates.

become effective on the first day of the first test year. ORA's proposed modification to the legislation is consistent with the legislative intent of AB 2838, which was to have interim rates go into effect in one year's time if a general rate case ("GRC") decision was not forthcoming.

**II. THE COMMISSION SHOULD REQUIRE THE UTILITIES TO PROVIDE UPDATES OF RECORDED DATA WITHIN 45 DAYS OF FILING THEIR APPLICATION FOR JANUARY FILERS AND WITHIN 30 DAYS FOR JULY FILERS.**

The May 26 RDD recognizes the need to allow the utilities to update their application with historical data as long as the recorded data is used in the same manner and for the same purpose as the data included in the original application. (May 26 RDD, Appendix, p. 13.) However, the May 26 RDD provides the utilities with an excessive amount of time to update their applications. The May 26 RDD allows the utilities to update recorded data "[u]p to 30 days before ORA's report is due." (*Ibid.*)

If ORA receives the last update only 30 days before its report is due, ORA will have insufficient time to write its report and conduct the appropriate project and management reviews. In ORA's comments on the May 4, 2004 RDD, ORA recommended that the utilities be allowed to update their applications within 30 days of filing. ORA continues to recommend that the Commission allow July filers to update their application with recorded data 30 days after filing their application. Because year-end data may not yet be available for January filers, ORA recommends that January filers be permitted to update their applications with recorded data up to 45 days after filing their applications to assure year end recorded data can be incorporated.<sup>4</sup>

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<sup>4</sup> ORA notes that the current rate case plan allows the utilities to file updates 30 days after the application is filed and allows additional time for January filers to incorporate recorded data from the previous year. (D.90-08-045, Appendix A, p. 7)

ORA recommends the following change to page 13 of the Appendix of the May 26 RDD to incorporate this change:

Up to 30 days before ORA's report is due, An update of more recent recorded data used in the application may be provided by the utility and used by ORA in its reports. This update shall be submitted no later than 45 days after the application is filed for January filings, and no later than 30 days for July filings. The more recent recorded data must be used in the same manner and for the same purpose as the data included in the original application. New or additional items or forecasted costs are not updates to recorded data and will not be accepted.

ORA also recommends that the Commission add a line between lines 6 and 7 to the Schedule Summary on page 4 of the Appendix of the May 26 RDD to reflect that updates are allowed 30 to 45 days after the applications are filed depending on when the application is filed.

### **III. ORA OPPOSES THE RDD'S REQUIREMENTS FOR ORA WORKPAPERS**

ORA opposes the May 26 RDD requirement that ORA workpapers meet many of the same standards as those required of the utilities. The RDD states that ORA's workpapers must include a table of contents, page numbering, and cross-reference to its report. There are presently no such requirements for ORA workpapers in Commission proceedings involving other industries and no such requirements should be adopted here.<sup>5</sup>

As ORA argued in its April 14, 2004 reply comments, the utility has the burden to prove that its requested rate relief is justified and fully documented. ORA is merely reviewing the utilities' requests. The utilities have more staff

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<sup>5</sup> In energy proceedings ORA provides its workpapers within a week of serving its testimony and there are no requirements for table of contents, page numbering, or cross-referencing.

available than ORA to prepare their workpapers and their staff has detailed knowledge about the utilities' operations. While the utilities have years to prepare for their next rate case, ORA has only a few months to review the utilities' applications and recommend the appropriate adjustments. In addition, while ORA is working on one utility's rate case, ORA will also be working on rate cases for other utilities. If ORA workpapers are required to meet these new requirements, it will effectively reduce the level of review that ORA staff can conduct because it would take time away from reviewing other areas of the utilities' application.

ORA recommends the Commission remove these requirements and proposes the following change to page 14 of the Appendix:

ORA and any intervenors shall serve their exhibits and prepared testimony on all parties listed on the service list to the proceeding. Two sets shall be submitted to the Principal Hearing Officer. Workpapers shall be included with the set for the applicant and all active parties. ORA should use reasonable best efforts to arrange its workpapers in an organized and logical fashion.~~ORA's workpapers must include a table of contents, page numbering, and cross references to its report and must be arranged in a logical fashion. To the extent not included in the reports, the workpapers must show ORA's rationale, including any calculations, for the positions in its reports.~~

#### **IV. ORA AGREES WITH THE RDD'S TREATMENT OF NONRECURRING SIGNIFICANT EXPENSES IN THE ESCALATION CALCULATION BUT CONTINUES TO OPPOSE INCLUSION OF GROWTH IN THIS CALCULATION**

The May 26 RDD excludes significant expenses items from test year estimates prior to escalation. The May 26 RDD changed the definition of "significant" to that representing more than 1% of test year gross revenue. (*Id.* at p. 12.) ORA agrees with excluding these items from the escalation calculation and with the May 26 RDD's revised definition of "significant." However, ORA continues to oppose the RDD's inclusion of customer growth in the escalation

calculation. ORA will not reargue this issue here but refers the Commission to ORA's April 2, 2004 and May 4, 2004 comments for a detailed discussion of this issue.

**V. WHILE ORA SUPPORTS THE RDD'S TREATMENT OF GENERAL OFFICE EXPENSES, IF THE COMMISSION IS CONSIDERING CHANGING THIS PORTION OF THE RDD, ORA PREFERS A MODIFICATION TO ALLOW GENERAL OFFICE FILINGS MORE THAN ONCE EVERY THREE YEARS**

The RDD limits multi-district utilities to filing their General Office ("GO") allocations once every three years. (May 26 RDD, p. 15.) The RDD allows the GO allocations implemented as part of each district's GRC. ORA agrees with the RDD on this issue.

In the June 1, 2004 all-party meeting with Commissioner Brown, ORA indicated that if the Commission was considering changing this portion of the draft decision to allow the utilities to implement the GO allocations outside of the GRC process, ORA would instead prefer a compromise position that would allow, but not require, utilities to file GO expense applications more often than once every three years but still apply the most recent authorized GO allocations only to the districts with pending GRCs.

**VI. ORA RECOMMENDS CHANGES TO CLARIFY ESCALATION FACTOR NOMENCLATURE**

ORA recommends the following clarifying changes to pages 12 and 13 of the May 26 RDD to make the RDD consistent with documents published by ORA's Energy Cost of Service Branch. When ORA issues its "Estimates of Non-labor and Wage Escalation Rates," memorandum it refers to forecasted inflation as "labor" and not "wage," even though the word "wage" is in the document title. ORA recommends the Commission revise the table on page 13 of the May 26 RDD to be consistent with this language. In addition, in ORA's "Summary of Compensation Per Hour" memorandum the 60/40 composite factor is actually 60

percent non-labor and 40 percent compensation for contracted services and not “wages.” ORA similarly proposes revising the table on page 13 to be consistent with this memorandum. Finally, ORA will start publishing a monthly memorandum on the U.S. Cities CPI-U to facilitate review and processing of future rate cases. Therefore, ORA recommends the May 26 RDD reference this new document. To eliminate any ambiguity between the recorded and forecasted CPI-U, ORA recommends the decision explicitly add the word “recorded” to the reference to CPI-U below. These changes are incorporated as follows:

To implement the escalation increase, no less than 45 days before the start of the escalation year, the utility may file an advice letter setting out its calculations and supporting analysis for the escalation year rates. The most recent “Estimates of Non-labor and Wage Escalation Rates” and “Summary of Compensation Per Hour” as published by ORA, Energy Cost of Service Branch (ECSB) shall be used as the escalation rates. Items not covered by the ECSB rates shall be escalated by the most recently available, recorded, 12-month-ending change in the U.S. Cities CPI-U ~~published by the U.S. Bureau of Labor Statistics~~ as published by ORA, Energy Cost of Service Branch (ECSB). The test year adopted quantity for the following Summary of Earnings line items shall be increased by the applicable rate as follows:

LINE ITEM	ESCALATION RATE
Purchased Chemicals	Non-Labor 60%/ <del>Wage 40%</del> <u>Compensation per hour 40%</u>
Payroll	<del>Wage</del> <u>Labor</u>
Pensions and Benefits	<del>Wage</del> <u>Labor</u>
Other O&M and A&G	Non-Labor 60%/ <del>Wage</del> <u>Compensation per hour 40%</u>
Payroll Taxes	<del>Wage</del> <u>Labor</u>
Other Taxes	Non-Labor 60%/ <del>Wage</del>



(excluding income)	<u>Compensation per hour 40%</u>
Loans, Insurance, Contracted Services, Rents	CPI-U (previous 12 months)

ORA recommends similar changes to pages 7 and 8 of the Appendix.

Escalation year labor expenses will be estimated by escalating test year labor expenses by the most recent labor inflation factors as published by the Office of Ratepayer Advocates. Non-labor escalation year expenses, excluding water production related expenses, will be estimated by escalating test year non-labor expenses by the most recent composite non-labor 60% / compensation per hour 40% ~~labor/non-labor~~ inflation factors published by ORA. In each water utility's escalation year advice letter filing the most recent ORA inflation factors will be used. Escalation year water production related expenses will be based on escalation year sales.

## **VII. ORA RECOMMENDS CHANGES TO THE APPENDIX TO MAKE IT CONSISTENT WITH THE TEXT OF THE DRAFT DECISION**

ORA noticed that some of the changes proposed in the text of the RDD are not fully incorporated into the Appendix. ORA recommends that the Commission make the following changes to the Appendix to make it consistent with the text of the RDD:

- ORA recommends inserting a column for the proposed changes in the table on page 5 of the Appendix.
- Because a revision to the earnings test is planned for Phase II, ORA recommends the RDD reflect that in the discussion of the escalation year increases on page 13 of the decision. The revised text would read:

The utility shall also include with its advice letter all data and calculations necessary to show the Weather Normalized Pro-Forma Rate of Return on Recorded Operations, ~~as specified in Guidelines for Normal~~

~~Ratemaking Adjustments in Connection with the Calculation of Weather Normalized Pro Forma Rate of Return on Recorded Operations for Water Utilities (10/30/85)~~ as agreed to by parties in Phase II. The escalation year increase shall be decreased to the extent the pro-forma rate of return exceeds the authorized rate of return for the 12 months ending in September for January filers and in April for July filers prior to the escalation year.

- The May 26 RDD requires each GRC decision to include a standard ordering paragraph “providing for escalation year increases subject to an earnings test.” Footnote 5 on page 16 of the appendix provides a sample ordering paragraph which states in part:

Advice letters for the authorized rate increase for each escalation year may be filed in accordance with GO 96-A no later than 45 days prior to the first day of the escalation year. The filing shall include appropriate work papers. *The increase shall be the amount authorized herein, or a proportionate lesser increase if the utility’s rate of return on rate base, adjusted to reflect rates then in effect, normal ratemaking adjustments, as specified in the pro forma earnings test, for the 12 months ending September 30th of the preceding year, exceeds the amount authorized in this decision . . .* (Emphasis added)

ORA notes that it will not be possible to determine the escalation year revenue requirement at the time a GRC decision is adopted. This amount will need to be determined at the time the utility files the Advice Letter for their escalation year increase. The footnote in the Appendix should be revised accordingly.

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## **VIII. CONCLUSION**

ORA recommends that the Commission adopt the draft decision as modified above. ORA continues to recommend that the Commission review the entire rate case plan in two years as it is possible and even likely that issues concerning the adopted plan will arise during the next two years.

Respectfully submitted,

/s/     MONICA MCCRARY

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June 4, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document  
“**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE MAY  
26, 2004 DRAFT DECISION**” in **R.03-09-005**.

A copy was served as follows:

[ X ] **BY E-MAIL**: I sent a true copy via e-mail to all known parties of record  
who have provided e-mail addresses.

[ X ] **BY MAIL**: I sent a true copy via first-class mail to all known parties of  
record.

Executed in San Francisco, California, on the **4<sup>th</sup>** day of **June, 2004**.

/s/ REBECCA ROJO

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Rebecca Rojo